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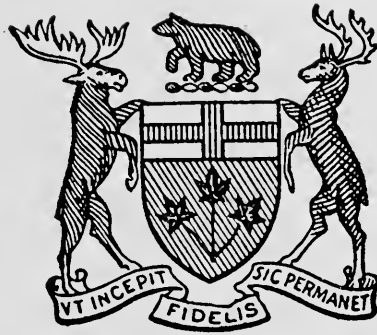
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ONTARIO

**REPORT No. 3A**

**OF THE**

**ONTARIO LAW REFORM COMMISSION**

**ON**

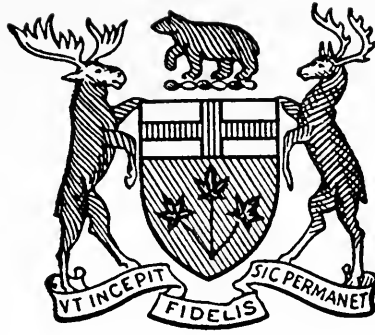
**PERSONAL PROPERTY SECURITY**

**LEGISLATION**

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**DEPARTMENT OF THE ATTORNEY GENERAL**





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**REPORT No. 3A**

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**ONTARIO LAW REFORM COMMISSION**

**ON**

**PERSONAL PROPERTY SECURITY**

**LEGISLATION**

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**DEPARTMENT OF THE ATTORNEY GENERAL**

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**MAY 18, 1966**

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## ONTARIO LAW REFORM COMMISSION

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MISS A. F. CHUTE  
PARLIAMENT BUILDINGS  
TORONTO 2

TO THE HONOURABLE A. A. WISHART, Q.C.,  
*Attorney-General for Ontario.*

Dear Mr. Attorney:

*Re: The Proposed Personal Property Security Act*

Under the provisions of section 2, subsection 1 (d) of The Ontario Law Reform Commission Act, 1964, 12-13 Eliz. II, c. 78, the Commission was asked to consider and report on a draft Bill designed to reform and make uniform the law regarding security interests in personal property and fixtures.

1. On May 28, 1965, the Commission submitted its report together with a draft Bill based on the draft Bill referred to us. In paragraph 26 of our report, we recommended "that the Bill be introduced and given first reading at the present Session of the Legislature so that it may be critically examined by the legal profession and others interested in this field of commercial law". The Bill was not introduced at the last Session of the Legislature but the report was released together with the draft Bill submitted and given wide circulation in August, 1965. In a letter circulating the Bill, you stated "it would be of great assistance to us if we might have your views, criticisms, suggestions and recommendations after you have had an opportunity to study this material. The subject is most important to our society and deserves the most thorough and complete study that we may give to it before any legislative action is taken." Following the circulation of the report and the draft Bill, briefs and comments were received from the following persons and institutions:

The Committee chaired by F. M. Catzman, Esq., Q.C.

The Board of Trade of Metropolitan Toronto

Professor Jacob S. Ziegel, College of Law,  
University of Saskatchewan

Federated Council of Sales Finance Companies

His Honour, Judge Wilfred W. Leach

His Honour, Judge Ian M. Macdonell

His Honour, Judge H. E. Richardson

His Honour, Judge Harry Waisberg

The Kenora Law Association

The Eastern & Chartered Trust Company

The Industrial Development Bank

The Ontario Development Agency, Department of  
Economics and Development

Delta Acceptance Corporation Limited

The Canadian Manufacturers' Association

You referred these briefs and comments to us for consideration.

2. The Commission considered all the representations submitted and wishes to express its thanks and appreciation to all those who made submissions to you. These have been most useful in the further consideration of the draft Bill. The Commission has not been able to accept all the suggestions made for alteration in the draft Bill but many recommendations and criticisms were found to be meritorious. These form the basis of the supplementary report.

3. Attention is drawn to paragraph 11 of the original report where it is stated that one of the two main features of the proposed legislation was the establishment of a central registry system with branch offices throughout Ontario in which searches might be made to determine whether personal property situated in Ontario has been charged to secure an obligation. The Commission returned to this matter in paragraphs 16 and 17 and, while reserving the question of the economic feasibility of the scheme for central registration, did indicate that the fees for searches and certificates should be kept to a minimum so that the service to the public in providing information as to security transactions will be widely used. The Commission was, and is, of the opinion that the principal cost of operation and the maintenance of the assurance fund should fall on those registering under the Act.

4. In your letter of April 26, 1966, the Commission was informed that the Government was giving consideration to confining the central registry system to security agreements involving motor vehicles rather than including security agreements on all personal property which could be dealt with on a central registration basis at some future date if the necessity warranted the expenditure. We are not in any different position than we were when we made our first report to comment on the technical and economic aspects of the proposed central registry scheme. Accordingly, we have nothing to add to what was said in paragraphs 16 and 17 of Report No. 3. If it is established that a central registry for security agreements in all manner of personal property is not technically or economically feasible, or that there should be a central registry for only those security agreements concerning motor vehicles, it would be necessary to recast the proposed legislation very extensively. *In this as in our former report we assume the existence of the central registry system for all security agreements affecting personal property.*

5. In paragraph 21 of its original report, the Commission dealt with agreements creating purchase-money security interests whereby the secured party takes security on chattels in addition to the property covered by the sale. The Commission strongly recommended that where this was done there should be a special provision in the draft Bill requiring an affidavit of the debtor stating that he is fully aware of the nature of the transaction. This recommendation of our report was implemented by the addition of section 15 to the draft Bill. This provision met with little favour from those making representations on the Bill, although no representations were received from persons expressly representing consumer interests.

6. After our report had been made, the Final Report of the Select Committee of the Ontario Legislature on Consumer Credit (Thursday, June 10, 1965, Sessional Paper No. 85) was released. The report of the Select Committee recommended (p. 29, para. 202) that a seller should not be able to obtain a lien on goods other than the goods that were the subject of the immediate sale, and further recommended the enactment of legislation requiring that no contract other than one for services should provide for a lien on any goods fully paid for, or which had not been sold by the seller.

7. This recommendation of the Select Committee is reflected in the provisions of section 19 of Bill 101 currently before the Legislature being, "An Act to provide for the Protection of Buyers of Consumer Goods and for the Fair Disclosure of the Cost of Credit". The section enacts that any provision in any executory contract or in any security agreement incidental thereto under which the seller may acquire title to, possession of or any rights in any goods of the buyer, other than to goods passing to the buyer under the contract, is not enforceable.

8. It is clear that, if and when Bill 101 is enacted, sections 14, 15 and 48 (1) (f) and Form 2 may be deleted from the Personal Property Security Act. If, however, section 19 of Bill 101 is not enacted, we recommend their retention in the personal property security legislation.

9. In the light of all the representations made, the Commission recommends that the draft Bill attached to Report No. 3 be amended as follows:

## PART I

### GENERAL

#### SECTION 2

It was the original intention of the Commission to have assignments of book debts not intended as security, and the provisions for their registration dealt with in a new Assignment of Book Debts Act. For this reason, they were excluded from the draft Bill. Further study has convinced the Commission that "every assignment of book debts not intended as security" should be subject to the provisions of the personal property security legislation and accordingly a further subsection should be added to cover this point.

The reasons advanced for this change, which the Commission finds compelling, are as follows:

- (1) The existing Assignment of Book Debts Act is most unsatisfactory and its repeal was recommended by the provisions of section 70 of the former draft Bill. This would have left absolute assignments not subject to any specific legislation. It is felt that the simplest and most satisfactory way of dealing with the problem is to bring all assignments of book debts within the provisions of this Act.
- (2) Since accounts receivable are intangibles and cannot be transferred by visible change of possession and since notice of an assignment of accounts receivable is of importance in granting credit, registration must be provided for.
- (3) Absolute assignments and assignments intended as security only are not always distinguishable. Thus, an absolute assignment with a right of recourse may technically be construed as not being "an assignment intended as security" within the meaning of section 2 (1) (b) and, though absolute in form, may in reality be "intended as security".
- (4) It is also felt that some advantage is to be gained by having our legislation, if possible, uniform with the United States Uniform Commercial Code.

## SECTION 3—Subsection 1 (a)

This subsection provides that the Act does not apply to a lien given by statute or rule of law. An exception to this rule was stated in the original draft to be the lien for materials and services covered in section 33 of the draft Bill. The liens referred to in subsection 3 (b) of section 37 and subsection 2 (b) of section 39 should also be excepted.

## SECTION 6—Subsection 2

The purpose of this subsection of the draft Bill was to regulate, in Ontario, the seller's rights in goods which had been sold in the Province of Quebec. A similar provision is contained in the conditional sales legislation in the Province of Ontario. These provisions refer not only to revendication but also to resumption of possession, and the Commission feels that, in order to make it clear that the provisions in the draft Bill contemplate no change in the law, the subsection should refer to the right to resume possession as well as to the right to revendicate.

## SECTIONS 7 and 8

These sections of the draft Bill deal with perfection within Ontario of a security interest created in another jurisdiction where the collateral was brought into Ontario; and also with a continued perfection in Ontario of a perfection acquired in another jurisdiction. Further consideration has been given to the effect of sections 7 and 8 and the Commission is convinced that the principle of reciprocity by Order-in-Council should be abandoned in favour of automatic recognition within the established common law principles of the conflict of laws. Accordingly, these sections should read as follows:

- “7.—(1) A security interest in collateral already perfected under the law of the jurisdiction in which the collateral was when the security interest attached and before being brought into Ontario continues perfected in Ontario for four months and also thereafter if within the four-month period it is perfected in Ontario.
- (2) Notwithstanding subsection 1, where the secured party receives notice within the four-month period mentioned therein that the collateral has been brought into Ontario, his security interest in the collateral ceases to be perfected in Ontario unless he registers the security agreement covering the collateral within fifteen days from the date that he receives such notice or upon the expiration of the four-month period whichever is earlier.
- (3) A security interest that has ceased to be perfected in Ontario due to the expiration of the four-month period may thereafter be perfected in Ontario but such perfection takes effect from the time of its perfection in Ontario.

8. Where a security interest was not perfected under the law of the jurisdiction in which the property was when the security interest attached and before being brought into Ontario, it may be perfected in Ontario within fifteen days from the date the property is brought into Ontario, in which case perfection dates from the time of perfection in Ontario."

## PART II

### VALIDITY OF SECURITY AGREEMENTS AND RIGHTS OF PARTIES

#### SECTIONS 14 and 15

As indicated earlier in this report, if section 19, Bill 101 "An Act to provide for the Protection of Buyers of Consumer Goods and for the Fair Disclosure of the Cost of Credit" becomes law, sections 14 and 15 would not be required in the personal property security legislation, since a provision for the seller acquiring title to, possession of or any rights in any goods of the buyer, other than the goods passing to the buyer under the contract, would not be enforceable.

#### SECTION 18

In view of the fact that The Sale of Goods Act in Ontario draws the distinction between conditions and warranties and the legal effects of them, it is necessary to add after the word "seller's" in section 18 (a) the words "conditions and".

## PART III

### PERFECTION OF INTEREST

#### SECTION 26—Subsection 2 (b)

The word "securities" should be inserted after the word "instruments".

#### SECTION 27—Subsection 1

The word "securities" should be inserted after the word "instruments".

#### SECTION 29—Subsection 2 (b)

In order to clarify the meaning of section 29, the draft Bill should be amended to read:

"(b) a holding on behalf of the secured party pursuant to section 25; or".

## SECTION 30—Subsections 1 and 2

The present wording of these subsections is ambiguous in that it does not make it sufficiently clear that the security interest must exist before the goods are sold or exchanged. Subsections 1 and 2 of section 30 should be amended to read as follows:

“30.—(1) A security interest in goods that are the subject of a sale or exchange, and that are returned to, or repossessed by,

(a) the person who sold or exchanged them; or

(b) a transferee of an intangible or chattel paper resulting from the sale of them,

re-attaches to the extent that the secured indebtedness remains unpaid.

(2) Where the security interest was perfected by a registration that is still effective at the time of the sale or exchange, it re-attaches as a perfected interest, but otherwise requires for its perfection a registration or a taking of possession by the secured party.”

## SECTION 30—Subsections 3 and 4

The present draft of these two subsections may be ambiguous as they appear to suggest that the security interest of a transferee of the intangible or chattel paper is subordinate to the security interest of the first secured party, whether or not he has perfected his security interest. It was intended that, subject to subsection 2 of section 30, the normal rules of priorities will apply and accordingly subsections 3 and 4 should be amended to read:

“30.—(3) A transferee of,

(a) an intangible resulting from a sale; or

(b) except as otherwise provided in section 31, chattel paper resulting from a sale,

has, as against the transferor, a security interest that is,

(c) subordinate to a security interest under subsection 1 that was a perfected interest when the goods became the subject of the sale or exchange; and

(d) otherwise subject to the provisions of section 36.”

## SECTION 30—Subsection 5

The former subsection 5 will require to be renumbered.

## SECTION 31—Subsection 2

The word “his” should be inserted in the phrase “in the ordinary course of business” so as to make it clear that it is the ordinary course of the purchaser’s business that is intended.

## SECTION 32—Subsection 1

On further consideration, the Commission feels that the concluding words of this subsection “and are superior to any security interest whether perfected or not” do not add anything and may confuse the interpretation of the section and, therefore, should be deleted.

## SECTION 37—Subsection 3

The Commission recommends that the word “notice” be substituted for the word “knowledge” in the last line of the subsection since it is clear that the reference is to The Registry Act, R.S.O. 1960, c. 348, sec. 80, as interpreted in *Edwards v. Gilboe*, (1959) O.R. 119, 17 D.L.R. (2d) 620, where it was held that the effect of registration under The Registry Act is the equivalent of actual notice of the instrument. Subsection 3 (b) of section 37 should be amended to read:

“(b) a creditor with a lien on the real property subsequently obtained as a result of judicial process; or”.

## SECTION 38

This section more conveniently should follow section 40.

## SECTION 39—Subsection 1

After further consideration, the Commission is convinced that the test in this subsection should be one of “attachment” and not “perfection” since it frequently happens that a security interest attaches before goods are fixed to the principal chattel and before the secured party has an opportunity to perfect his security interest by registration. In such a case, there would appear to be no reason why the owner of a security interest in the principal chattel which preceded the affixation of the accessory should have priority over the subsequently perfected security interest in the accessory. Subsection 1 (a) and (b) of section 39 should be amended to read as follows:

“(a) a security interest in an accession that attached before the goods became an accession has priority as to the accession over the claim of any person in respect of the whole;

(b) a security interest in goods that attached after the goods became an accession has priority over the claim of any person who subsequently acquired an interest in the whole, but not against a person who had an interest in the whole at the date of attach-



ment of the security interest in the accession, and who has not consented in writing to the security interest in the accession or disclaimed an interest in the accession as part of the whole.”

#### SECTION 39—Subsection 2 (*b*)

Subsection 2 (*b*) of section 39 should be amended to clarify the nature of the lien referred to and to bring it into line with the provisions of subsection 3 (*b*) of section 37. The amended subsection should read as follows:

“(b) a creditor with a lien on the whole subsequently obtained as a result of judicial process; or”.

#### SECTION 39—Subsection 4

The provisions of this subsection pertain to a retention of collateral in the form of an accession by the person having a security interest in the whole or principal chattel. The wording of the subsection in the original draft is misleading and should be amended to read as follows:

“(4) A person having a security interest in the whole that is subordinate to a security interest by virtue of subsections 1 and 2 may . . . ”.

### PART IV

#### REGISTRATION

The final settling of the provisions of this part must await the decision whether all personal property security agreements are to be included in a central registration system or merely those pertaining to motor vehicles. After having considered representations on the former draft, the Commission recommends the following amendments at this time:

#### SECTION 43

The original draft of section 43 was deficient in not specifically providing for the establishment of the central registration system. Accordingly, section 43 should be amended to read:

“43.—(1) A registration system shall be established.

(2) The central office of the registration system shall be located at or near the City of Toronto.

(3) A branch office of the registration system shall be located at or near each county and district town and at such other places as are determined from time to time by the Inspector of Legal Offices.”

## SECTION 45—Clause (c)

This clause should be amended to make it clear that it is the function of the branch office where the security agreement was registered to furnish a certified copy of it. The words “by the branch office where it was registered” should be added at the end of the original clause.

## SECTION 48—Subsection 1 (f)

If section 15 is deleted as a result of the enactment of section 19 of Bill 101, which would preclude taking security in addition to the collateral, the subject of the immediate sale, then subsection 1 (f) of section 48 could be deleted from this Bill. If section 15 is to remain in this Bill, then the reference in subsection 1 (f) of section 48 should be to section 15 and not section 16.

## SECTION 49—Subsection 1

This subsection should be amended to provide for the name and address of an assignee to be shown on the assignment document submitted for registration. This could be accomplished by adding a new clause to read as follows:

“(d) the full name and address of the assignee.”

## SECTION 50—Subsection 1

Representations were made suggesting the alteration of the records in the event of the change of name of the debtor. The Commission felt that this suggestion had merit but it probably could be done most effectively by making provision for it in the relevant Acts, e.g., The Change of Name Act, The Partnerships Registration Act, etc.

## SECTION 50—Subsection 2

This subsection should be amended by inserting after the word “assignment” in the second last line the words “and the name and address of the assignee”.

In concluding our recommendations under this Part, the Commission wishes to record that it had a long and fruitful discussion with Mr. R. E. Priddle, the Assistant Inspector of Legal Offices, and the Commission agrees with Mr. Priddle that, in settling the final form of the registration provisions, a new section should be added to the draft Bill enabling the Lieutenant Governor in Council to make regulations with regard to registration procedures.

## PART V

## DEFAULT—RIGHTS AND REMEDIES

## SECTION 63—Subsection 2 (a)

The word “the” before the word “failure” in the second last line of subsection 2 (a) of section 63 should be changed to “his”.

## PART VI

## MISCELLANEOUS

## SECTION 63a

A new section, in proper form, should be added to the Act to permit an application to a County Court Judge for an order extending the time with proper safeguards to interested parties within which, or before which, any act or thing is required by the Act to be done.

## SECTION 67

The words “or in the regulations” should be added after the word “Act” in the first line of this section.

## SECTION 70

Section 70 of the draft Bill provided for the repeal of a number of statutes dealing with the subject-matter covered in the proposed personal property security legislation. Section 8 of The Bills of Sale and Chattel Mortgages Act, R.S.O. 1960, c. 34, provides for registration of a bill of sale accompanied by an affidavit of *bona fides* where goods are sold but not accompanied by an immediate delivery and by an actual and continued change of possession of the goods. The Commission is of the view that this section should be retained in substance and that provision for registration of bills of sale in these circumstances should be made in conformity with the scheme of registration that is ultimately adopted for personal property security transactions under the Act.

Although section 70 does not involve the repeal of any provision of The Sale of Goods Act, consideration has been given to the provisions of subsection 2 of section 25 of that Act, where the buyer, with the consent of the seller, obtains possession of the goods and is able to deliver or transfer title to a subsequent purchaser in good faith free of any lien or other right of the original seller in respect of the goods.

Subsection 2 of section 25 should be retained and the present provision should be renumbered section 25 subsection 2 (a) and a new subsection numbered section 25 subsection 2 (b) should be enacted to read as follows:

“(b) subsection 2 (a) does not apply to goods, the possession of which has been obtained by a buyer under a security agreement whereby the seller retains a security interest within the meaning of *The Personal Property Security Act, 1966* and the rights of the parties shall be determined by the provisions of that Act”.

10. It will be observed that one of the Commissioners, W. Gibson Gray, Esq., Q.C., has not signed this report. Mr. Gray participated in all of the discussions and has authorized us to say that he concurs in the recommendations made. He was abroad when the final draft was completed.

All of which is respectfully submitted.

JAMES C. McRUER,  
*Chairman*

H. ALLAN LEAL,  
*Commissioner*

RICHARD A. BELL,  
*Commissioner*

WILLIAM R. POOLE,  
*Commissioner*

W. GIBSON GRAY,  
*Commissioner*

May 18, 1966.

**THE PROPOSED  
PERSONAL PROPERTY SECURITY ACT  
AND  
SALE OF GOODS AMENDMENT  
ACT, 1966**

#### EXPLANATORY NOTE

This Bill is introduced and given First Reading at this Session of the Legislature in order that it may have wide distribution in convenient form for study by persons and organizations interested. This will also permit consideration in connection with this Bill of the results of the studies now being made by the Department of Transport as to the use of electronic devices in a central registration system for motor vehicles.

The purpose of the Bill is to reform and make uniform the law regarding security interests in personal property and fixtures. This is the field of commercial transactions now covered in Ontario by *The Assignment of Book Debts Act*, *The Bills of Sale and Chattel Mortgages Act*, *The Conditional Sales Act* and *The Corporation Securities Registration Act* and in all the large commercial states of the United States by the Uniform Commercial Code upon which this Bill is based.

The Bill was originally developed by a committee under the chairmanship of Fred M. Catzman, Q.C., and was approved in principle by the Canadian Bar Association and the Attorney General's Committee on the Administration of Justice.

The Bill in its present form is the result of intensive study by the Ontario Law Reform Commission and is the subject of Report No. 3, dated May 28, 1965, and of Report No. 3A, dated May 18, 1966, of the Commission.

Copies of this Bill and the Reports of the Ontario Law Reform Commission may be obtained upon request to the Office of the Attorney General, Parliament Buildings, Toronto.

Comments and suggestions with respect to the Bill will be welcomed and should be addressed to the Attorney General, Parliament Buildings, Toronto.

See also *An Act to amend The Sale of Goods Act* (page 59).

## DRAFT BILL

### An Act to reform and make uniform the Law regarding Security Interests in Personal Property and Fixtures

**H**ER MAJESTY, by and with the advice and consent of  
the Legislative Assembly of the Province of Ontario,  
enacts as follows:

**1.** In this Act,

Interpre-  
tation

- (a) “accessions” means goods that are installed in or affixed to other goods;
- (b) “account debtor” means a person who is obligated on chattel paper or on an intangible;
- (c) “chattel paper” means one or more than one writing that expresses both a monetary obligation and a security interest;
- (d) “collateral” means property that is subject to a security interest;
- (e) “consumer goods” means goods that are used or acquired for use primarily for personal, family or household purposes;
- (f) “creditor” includes an assignee for the benefit of creditors, a trustee in bankruptcy, a receiver, and an executor, administrator or committee;
- (g) “debtor” means a person who owes payment or other performance of the obligation secured, whether or not he owns or has rights in the collateral, and includes an assignor of books debts and an assignee of the debtor’s interest in the collateral referred to in subsection 1 of section 50, or such one or more of them as the context requires;

- (h) "default" means the failure to pay or otherwise perform the obligation secured when due or the occurrence of any event whereupon under the terms of the security agreement the security becomes enforceable;
- (i) "document of title" means any writing that purports to be issued by or addressed to a bailee and purports to cover such goods in the bailee's possession as are identified or fungible portions of an identified mass, and that in the ordinary course of business is treated as establishing that the person in possession of it is entitled to receive, hold and dispose of the document and the goods it covers;
- (j) "equipment" means goods that are not inventory or consumer goods;
- (k) "goods" means all chattels personal, other than choses in action and money, and includes emblements and industrial growing crops, and oil, gas and other minerals to be extracted, and timber to be cut, and goods are either consumer goods, equipment or inventory;
- (l) "instrument" means a bill, note or cheque within the meaning of the *Bills of Exchange Act* (Canada), or any other writing that evidences a right to the payment of money and is of a type that in the ordinary course of business is transferred by delivery with any necessary endorsement or assignment, but does not include a writing that constitutes part of chattel paper, a document of title or securities;
- (m) "intangible" means a chose in action, but does not include chattel paper, a document of title, an instrument or securities;
- (n) "inventory" means goods that are held by a person for sale or lease, or that are to be furnished or have been furnished under a contract of service, or that are raw materials, work in process or materials used or consumed in a business or profession;
- (o) "judge" means a judge of a county or district court;
- (p) "notify" means to take such steps as are reasonably required to give information to the person to be notified so that,

(i) it comes to his attention, or



- (ii) it is directed to such person at his customary address or at his place of residence, or at such other place as is designated by him over his signature,

and “notification” has a corresponding meaning;

- (q) “proceeds” means personal property in any form or fixtures derived directly or indirectly from any dealing with collateral or proceeds or that indemnifies or compensates for collateral destroyed or damaged;
- (r) “purchase-money security interest” means a security interest that is,
  - (i) taken or reserved by the seller of the collateral to secure payment of all or part of its price, or
  - (ii) taken by a person who gives value that enables the debtor to acquire rights in or the use of the collateral, if such value is applied to acquire such rights;
- (s) “registrar” means the registrar of personal property security;
- (t) “secured party” means a person who has a security interest;
- (u) “securities” means shares, stock, warrants, bonds, debentures, debenture stock or the like issued by a corporation or other person, or a partnership, association or government;
- (v) “security agreement” means an agreement that creates or provides for a security interest;
- (w) “security interest” means an interest in goods, other than building materials that have been affixed to the realty, fixtures, documents of title, instruments, securities, chattel papers or intangibles that secures payment or performance of an obligation, and includes an interest arising from an assignment of book debts;
- (x) “value” means any consideration sufficient to support a simple contract.

## PART I

Application  
of Act

**2.** Except as otherwise provided in subsection 1 of section 3, this Act applies,

(a) to every transaction without regard to its form and without regard to the person who has title to the collateral that in substance creates a security interest, including, without limiting the foregoing,

(i) a chattel mortgage, conditional sale, equipment trust, floating charge, pledge, trust deed or trust receipt, and

(ii) an assignment, lease or consignment intended as security; and

(b) to every assignment of book debts not intended as security.

Where Act  
does not  
apply

**3.—**(1) This Act does not apply,

(a) to a lien given by statute or rule of law, except as provided in section 33, clause *b* of subsection 3 of section 37, and clause *b* of subsection 2 of section 39;

(b) to a transfer of an interest or claim in or under any policy of insurance or contract of annuity; or

R.S.O. 1960,  
c. 290

(c) to a transaction under *The Pawnbrokers Act*.

Rights  
under  
R.S.O. 1960,  
c. 358,  
not  
affected

(2) The rights of buyers and sellers under subsection 2 of section 20 and sections 39, 40, 41 and 43 of *The Sale of Goods Act* are not affected by this Act.

Errors,  
omissions,  
etc.

**4.** A document to which this Act applies is not invalidated nor shall its effect be destroyed by reason only of a defect, irregularity, omission or error therein or in the execution thereof unless, in the opinion of the court, the defect, irregularity, omission or error is shown to have actually misled some person whose interests are affected by the document.

Conflict  
of laws

**5.—**(1) If the office where the assignor of intangibles that are accounts receivable or contract rights keeps the records concerning them is in Ontario, the validity and perfection of a security interest therein and the possibility and effect of proper registration are governed by this Act, otherwise by the law, including the conflict of laws rules, of the jurisdiction where such office is located.

(2) Where the chief place of business of a debtor is in <sup>Idem</sup> Ontario, the validity and perfection of a security interest and the possibility and effect of proper registration with regard to intangibles, other than accounts receivable or contract rights, or with regard to goods of a type that are normally used in more than one jurisdiction, if such goods are classified as equipment or classified as inventory by reason of their being leased by the debtor to others, are governed by this Act; otherwise by the law, including the conflict of laws rules, of the jurisdiction where such chief place of business is located.

(3) If a jurisdiction does not provide, by registration or <sup>Idem</sup> recording in such jurisdiction, for perfection of a security interest of the kind referred to in subsection 1 or 2, the security interest may be perfected by registration in Ontario.

**6.**—(1) Where personal property, other than that governed <sup>Conflict of laws, continued</sup> by subsection 1 or 2 of section 5, was already subject to a security interest when it was brought into Ontario, the validity of the security interest in Ontario is to be determined by the law, including the conflict of laws rules, of the jurisdiction where the property was when the security interest attached.

(2) Where goods brought into Ontario are subject to the <sup>Right of revendication</sup> seller's right to revendicate or to resume possession of the goods, unless the seller registers a caution (Form 1) within twenty days after the day on which the goods were brought into Ontario, such right is unenforceable in Ontario thereafter.

**7.**—(1) A security interest in collateral already perfected <sup>Conflict of laws, continued</sup> under the law of the jurisdiction in which the collateral was when the security interest attached and before being brought into Ontario continues perfected in Ontario for four months and also thereafter if within the four-month period it is perfected in Ontario.

(2) Notwithstanding subsection 1, where the secured party <sup>Idem</sup> receives notice within the four-month period mentioned therein that the collateral has been brought into Ontario, his security interest in the collateral ceases to be perfected in Ontario unless he registers the security agreement covering the collateral within fifteen days from the date that he receives such notice or upon the expiration of the four-month period, whichever is earlier.

(3) A security interest that has ceased to be perfected in <sup>Idem</sup> Ontario due to the expiration of the four-month period may thereafter be perfected in Ontario, but such perfection takes effect from the time of its perfection in Ontario.

Conflict  
of laws,  
concluded

**8.** Where a security interest was not perfected under the law of the jurisdiction in which the property was when the security interest attached and before being brought into Ontario, it may be perfected in Ontario within fifteen days from the date the property is brought into Ontario, in which case perfection dates from the time of perfection in Ontario.

## PART II

### VALIDITY OF SECURITY AGREEMENTS AND RIGHTS OF PARTIES

Effectiveness  
of security  
agreement

**9.** Except as otherwise provided by this or any other Act, a security agreement is effective according to its terms between the parties to it and against third parties.

Enforce-  
ability of  
security  
interest

**10.** A security interest is not enforceable by or against a third party unless,

- (a) the collateral is in the possession of the secured party; or
- (b) the debtor has signed a security agreement that contains a description of the collateral and, if the collateral is or includes fixtures or crops, or oil, gas or other minerals to be extracted, or timber to be cut, a description of the land concerned.

Delivery of  
copy of  
agreement

**11.** Where a security interest is created or provided for by a security agreement, the secured party shall deliver a copy of the security agreement to the debtor within ten days after the execution thereof, and, if he fails to do so after a request by the debtor, a judge may on summary application by the debtor make an order for the delivery of such a copy to the debtor and may make such order as to costs as he deems just.

When  
security  
interest  
attaches

**12.—(1)** A security interest attaches when,

- (a) the parties intend it to attach;
- (b) value is given; and
- (c) the debtor has rights in the collateral.

Idem

(2) For the purpose of subsection 1, the debtor has no rights in,

- (a) crops until they become growing crops;
- (b) fish until they are caught;

(c) oil, gas or other minerals until they are extracted; or

(d) timber until it is cut.

**13.**—(1) Except as provided in subsection 2, a security agreement may cover the young of animals after conception and after-acquired property. After-acquired property, etc.

(2) No security interest attaches under an after-acquired property clause, Exception

(a) to crops that become such more than one year after the security agreement has been executed, except that a security interest in crops that is given in conjunction with a lease, purchase or mortgage of land may, if so agreed, attach to crops to be grown on the land concerned during the term of such lease, purchase or mortgage; or

(b) to consumer goods, other than accessions, unless the debtor acquires rights in them within ten days after the secured party gives value.

**14.** A purchase-money security interest in consumer goods does not attach to any collateral other than such consumer goods. Limitation on coverage

**15.** Where a security agreement creates or provides for a purchase-money security interest in other than consumer goods and includes collateral in addition thereto, it shall be accompanied by an affidavit of the debtor (Form 2) stating, Where affidavit required

(a) that the debtor is fully aware of the nature of the transaction and that he knows that the security interest extends to personal property in addition to that included in the purchase-money security interest; and

(b) that the security interest was not created in fraud of creditors.

**16.** A security agreement may secure future advances or other value whether or not the advances or other value are given pursuant to commitment. Future advances

**17.** Except as to consumer goods, an agreement by a debtor not to assert against an assignee any claim or defence that he has against his seller or lessor is enforceable by the assignee who takes the assignment for value, in good faith and without notice, except as to such defences as may be asserted against the holder in due course of a negotiable instrument under the *Bills of Exchange Act* (Canada). Agreement not to assert defence against assignee

Seller's  
warranties

**18.**<sup>18</sup> Where a seller retains a purchase-money security interest in goods,

R.S.O. 1960,  
c. 358

- (a) *The Sale of Goods Act* governs the sale and any disclaimer, limitation or modification of the seller's conditions and warranties; and
- (b) except as provided in section 17, the conditions and warranties in a sale agreement shall not be affected by any security agreement.

Provision to  
accelerate

**19.** Where a security agreement provides that the secured party may accelerate payment or performance when he deems himself insecure, such provision shall be construed to mean that he has power to do so only if he in good faith believes that the prospect of payment or performance is impaired.

Care of  
collateral

**20.—**(1) A secured party shall use reasonable care in the custody and preservation of collateral in his possession, and, unless otherwise agreed, in the case of an instrument or chattel paper, reasonable care includes taking necessary steps to preserve rights against prior parties.

Idem,  
rights and  
duties of  
secured  
party

(2) Unless otherwise agreed, where collateral is in the secured party's possession,

- (a) reasonable expenses, including the cost of insurance and payment of taxes or other charges incurred in the custody and preservation of the collateral, are chargeable to the debtor and are secured by the collateral;
- (b) the risk of loss or damage, except where caused by the negligence of the secured party, is on the debtor to the extent of any deficiency in any insurance coverage;
- (c) the secured party may hold as additional security any increase or profits, except money, received from the collateral, and money so received, unless remitted to the debtor, shall be applied forthwith upon its receipt in reduction of the secured obligation;
- (d) the secured party shall keep the collateral identifiable, but fungible collateral may be commingled; and
- (e) the secured party may create a security interest in the collateral upon terms that do not impair the debtor's right to redeem it.

(3) A secured party is liable for any loss or damage caused <sup>Liability for loss</sup> by his failure to meet any obligations imposed by subsection 1 or 2, but does not lose his security interest.

(4) A secured party may use the collateral, <sup>Use of collateral</sup>

(a) in the manner and to the extent provided in the security agreement;

(b) for the purpose of preserving the collateral or its value; or

(c) pursuant to an order of,

(i) the court before which a question relating thereto is being heard, or

(ii) a judge upon application by originating notice to all persons concerned.

(5) A secured party, <sup>Idem</sup>

(a) is liable for any loss or damage caused by his use of the collateral otherwise than as authorized by subsection 4; and

(b) is subject to being ordered or restrained as provided in subsection 1 of section 63.

**21.—**(1) A debtor or a person having an interest in the <sup>Statements of account</sup> collateral or an execution creditor may, by a notice in writing, require the secured party to furnish him with a statement in writing,

(a) of the amount of the indebtedness and of the terms of payment thereof as of the date specified in the notice;

(b) approving or correcting as of the date specified in the notice a statement of the collateral attached to the notice; and

(c) approving or correcting as of the date specified in the notice a statement of the amount of the indebtedness and of the terms of payment thereof,

or any one or two of them.

(2) In the case of clause *b* of subsection 1, if the secured <sup>Idem</sup> party claims a security interest in all of a particular type of collateral owned by the debtor, he may so indicate in lieu of

approving or correcting the itemized list of such collateral contained in the statement of the collateral and attached to the notice.

Time for compliance with notice, liability for failure to answer

(3) The secured party shall answer a notice given under subsection 1 within fifteen days after he receives it, and, if without reasonable excuse he fails so to do or his answer is incomplete or incorrect, he is liable for any loss or damage caused thereby to the debtor or any other person.

Successors in interest

(4) Where the person receiving a notice under subsection 1 no longer has an interest in the obligation or collateral, he shall, within fifteen days after he receives the notice, disclose the name and address of the latest successor in interest known to him, and, if without reasonable excuse he fails so to do or his answer is incomplete or incorrect, he is liable for any loss or damage caused thereby to the debtor or any other person.

Idem

(5) A successor in interest shall be deemed to be the secured party for the purposes of this section when he receives a notice under subsection 1.

### PART III

#### PERFECTION OF INTEREST

Time when perfected

**22.** A security interest is perfected when,

- (a) it has attached; and
- (b) all steps required for perfection under any provision of this Act have been completed,

regardless of the order of occurrence.

Where unperfected security interest subordinate

**23.**—(1) Except as provided in subsection 3, an unperfected security interest is subordinate to,

- (a) the interest of a person,
  - (i) who is entitled to a priority under this or any other Act, or
  - (ii) who, without knowledge of the security interest and before it is perfected, assumes control of the collateral through legal process, or
  - (iii) who represents the creditors of the debtor as assignee for the benefit of creditors, trustee in bankruptcy or receiver; and



(b) the interest of a transferee who is not a secured party to the extent that he gives value without knowledge of the security interest and before it is perfected,

(i) of chattel paper, documents of title, securities, instruments or goods in bulk or otherwise, not in the ordinary course of the business of the transferor and where the transferee receives delivery of the collateral, or

(ii) of intangibles.

(2) The rights of a person under subclause iii of clause *a* <sup>Idem</sup> of subsection 1 in respect of the collateral are referable to the date from which his status has effect and arise without regard to the personal knowledge of the representative if any represented creditor was, on the relevant date, without knowledge of the unperfected security interest.

(3) A purchase-money security interest that is registered <sup>Purchase-money security interest</sup> before or within ten days after the debtor's possession of the collateral commences has priority over,

(a) interest set out in subclause ii or iii of clause *a* of subsection 1; and

(b) transfers in bulk or otherwise, not in the ordinary course of business, occurring between the security interest's attaching and its being registered.

**24.**—(1) If a security interest is originally perfected in <sup>Continuity of perfection</sup> any way permitted under this Act and is again perfected in some way under this Act without an intermediate period when it was unperfected, the security interest shall be deemed to be perfected continuously for the purposes of this Act.

(2) An assignee of a security interest succeeds in so far as <sup>Assignees</sup> its perfection is concerned to the position of the assignor at the time of the assignment.

**25.** Except as provided in section 27, possession of the <sup>Perfection by possession</sup> collateral by the secured party, or on his behalf by a person other than the debtor or the debtor's agent, perfects a security interest in,

(a) chattel paper;

(b) goods;

(c) instruments;

- (d) securities;
- (e) letters of credit and advices of credit; or
- (f) negotiable documents of title,

but, subject to section 24, only during its actual holding as collateral.

Perfection  
by regis-  
tration

**26.**—(1) Subject to section 22, registration perfects a security interest in,

- (a) chattel paper;
- (b) goods;
- (c) intangibles; or
- (d) documents of title.

Idem

(2) A security interest is not perfected until it is registered, except in the case of a security interest,

- (a) in collateral in possession of the secured party under section 25; or
- (b) temporarily perfected in instruments, securities or negotiable documents of title under section 27.

Temporary  
perfection

**27.**—(1) A security interest in instruments, securities or negotiable documents of title is a perfected security interest for the first ten days after it attaches to the extent that it arises for new value given under a registered security agreement.

Idem

(2) A perfected security interest in,

- (a) an instrument that a secured party delivers to the debtor for the purpose of,
  - (i) ultimate sale or exchange,
  - (ii) presentation, collection or renewal, or
  - (iii) registration of transfer; or
- (b) a negotiable document of title or goods held by a bailee that are not covered by a negotiable document of title, which document of title or goods the secured party makes available to the debtor for the purpose of,

- (i) ultimate sale or exchange,
- (ii) loading, unloading, storing, shipping or transshipping, or
- (iii) manufacturing, processing, packaging or otherwise dealing with goods in a manner preliminary to their sale or exchange,

remains perfected for the first ten days after the collateral comes under the control of the debtor.

(3) Beyond the period of ten days referred to in subsection 1 <sup>Idem</sup> or 2, a security interest under this section becomes subject to the provisions of this Act for perfecting a security interest.

**28.**—(1) Subject to this Act, a security interest in collateral that is dealt with so as to give rise to proceeds, <sup>Perfecting as to proceeds</sup>

- (a) continues as to the collateral, unless the secured party expressly or impliedly authorized such dealing; and
- (b) extends to the proceeds.

(2) Where a security interest in collateral was a perfected <sup>Idem</sup> security interest at the time of the dealing,

- (a) the security interest under clause *a* of subsection 1 is perfected in so far as sections 24, 25 and 26 are satisfied; and
- (b) the security interest under clause *b* of subsection 1 becomes unperfected ten days thereafter unless expressly covered by a security agreement relating to the original collateral that was at the time of dealing perfected by registration, but there is no perfected security interest in proceeds that are not identifiable or traceable.

**29.**—(1) A security interest in goods in the possession of a bailee who has issued a negotiable document of title covering them is perfected by perfecting a security interest in the document, and any security interest in them otherwise perfected while they are so covered is subject thereto. <sup>Perfecting as to goods held by bailee</sup>

(2) A security interest in goods in the possession of a bailee, <sup>Idem</sup> other than a bailee mentioned in subsection 1, is perfected by,

- (a) issuance of a document of title in the name of the secured party;

(b) a holding on behalf of the secured party pursuant to section 25; or

(c) registration as to the goods.

Goods  
returned or  
repossessed

**30.**—(1) A security interest in goods that are the subject of a sale or exchange and that are returned to, or repossessed by,

(a) the person who sold or exchanged them; or

(b) a transferee of an intangible or chattel paper resulting from the sale of them,

re-attaches to the extent that the secured indebtedness remains unpaid.

Idem

(2) Where the security interest was perfected by a registration that is still effective at the time of the sale or exchange, it re-attaches as a perfected interest, but otherwise requires for its perfection a registration or a taking of possession by the secured party.

Transferees

(3) A transferee of,

(a) an intangible resulting from a sale; or

(b) except as otherwise provided in section 31, chattel paper resulting from a sale,

has, as against the transferor, a security interest that is,

(c) subordinate to a security interest under subsection 1 that was a perfected interest when the goods became the subject of the sale or exchange; and

(d) otherwise subject to section 36.

Idem

(4) A transferee of an intangible or chattel paper resulting from a sale is, with respect to persons asserting interests in the goods under provisions other than subsections 1 to 3, subject to the provisions of this Act for perfecting a security interest.

Effect of  
perfection  
on pur-  
chasers of  
goods in  
ordinary  
course of  
business

**31.**—(1) A purchaser of goods from a seller who sells the goods in the ordinary course of business takes them free from any security interest therein given by his seller even though it is perfected and the purchaser actually knows of it.

Idem,  
purchasers  
of chattel  
paper

(2) A purchaser of chattel paper who takes possession of it in the ordinary course of his business has, to the extent that he gives new value, priority over any other security interest in it,

(a) that was perfected under section 26 if he did not actually know at the time he took possession that the chattel paper was subject to a security interest; or

(b) that has attached to proceeds of inventory under section 28, whatever the extent of his knowledge.

(3) A purchaser of a non-negotiable instrument who takes possession of it in the ordinary course of his business has priority to the extent that he gives new value over a security interest in it that was perfected under section 27 if he did not actually know at the time he took possession that the instrument was subject to a security interest.

Idem,  
purchasers  
of non-  
negotiable  
instruments

**32.**—(1) The rights of,

(a) a holder in due course of a bill, note or cheque within the meaning of the *Bills of Exchange Act* (Canada);

*Bona fide*  
purchasers  
of negotiable  
instruments,  
etc.  
R.S.C. 1952,  
c. 15

(b) a holder of a negotiable document of title who takes it in good faith for value; or

(c) a *bona fide* purchaser of securities,

are to be determined without regard to this Act.

(2) Registration under this Act is not such notice as to affect the rights of persons mentioned in subsection 1.

Idem

**33.** Where a person in the ordinary course of business furnishes materials or services with respect to goods in his possession that are subject to a security interest, any lien that he has in respect of such materials or services has priority over a perfected security interest unless the lien is given by an Act that provides that the lien does not have such priority.

Priority  
of liens for  
materials  
and services

**34.** The rights of a debtor in collateral may be transferred voluntarily or involuntarily notwithstanding a provision in the security agreement prohibiting transfer or declaring a transfer to be a default, but no transfer prejudices the rights of the secured party under the security agreement or otherwise.

Alienation  
of rights  
of debtors

**35.**—(1) A perfected security interest in crops or their proceeds given for a consideration to enable the debtor to produce the crops during the production season and given not more than three months before the crops become growing crops by planting or otherwise has priority over an earlier

Special  
priorities,  
crops

perfected security interest to the extent that such earlier interest secures obligations due more than six months before the crops become growing crops by planting or otherwise, even though the person giving the consideration knew of the earlier security interest.

Idem,  
purchase-  
money  
security  
interests,  
inventory

(2) A purchase-money security interest in inventory or its proceeds has priority over any other security interest in the same collateral,

- (a) if the purchase-money security interest was perfected at the time the debtor received possession of the collateral; and
- (b) if any secured party, whose security interest was actually known to the holder of the purchase-money security interest or who, prior to the registration by the holder of the purchase-money security interest, had registered a security agreement covering the same items or type of inventory, had received notification of the purchase-money security interest before the debtor received possession of the collateral covered by the purchase-money security interest; and
- (c) if such notification states that the person giving the notice had or expected to acquire a purchase-money security interest in inventory of the debtor, describing such inventory by item or type.

Idem,  
purchase-  
money  
security  
interests,  
other than  
inventory

(3) A purchase-money security interest in collateral or its proceeds, other than inventory, has priority over any other security interest in the same collateral if the purchase-money security interest was perfected at the time the debtor obtained possession of the collateral or within ten days thereafter.

Priorities,  
general rule

**36.**—(1) If no other provision of this Act is applicable, priority between security interests in the same collateral shall be determined,

- (a) by the order of registration, if the security interests have been perfected by registration;
- (b) by the order of perfection, unless all security interests have been perfected by registration; or
- (c) by the order of attachment under subsection 1 of section 12, if no security interest has been perfected.

Idem

(2) For the purposes of subsection 1, a continuously perfected security interest shall be treated at all times as if perfected by registration, if it was originally so perfected, and

it shall be treated at all times as if perfected otherwise than by registration if it was originally perfected otherwise than by registration.

**37.**—(1) Subject to subsection 3 of this section and notwithstanding subsection 3 of section 35, a security interest that attached to goods before they became fixtures has priority as to the goods over the claim of any person who has an interest in the real property. <sup>Priority of security interests, fixtures</sup>

(2) Subject to subsection 3, a security interest that attached to goods after they became fixtures has priority over the claim of any person who subsequently acquired an interest in the real property, but not over any person who had a registered interest in the real property at the time the security interest attached to the goods and who has not consented in writing to the security interest or disclaimed an interest in the goods as fixtures. <sup>Idem</sup>

(3) The security interests referred to in subsections 1 and 2 are subordinate to the interest of, <sup>Exceptions</sup>

- (a) a subsequent purchaser or mortgagee for value of an interest in the real property;
- (b) a creditor with a lien on the real property subsequently obtained as a result of judicial process; or
- (c) a creditor with a prior encumbrance of record on the real property in respect of subsequent advances,

if the subsequent purchase or mortgage was made or the lien was obtained or the subsequent advance under the prior encumbrance was made or contracted for, as the case may be, without actual notice of the security interest.

(4) If a secured party, by virtue of subsection 1 or 2 and subsection 3, has priority over the claim of a person having an interest in the real property, he may on default, subject to the provisions of this Act respecting default, remove his collateral from the real property if, unless otherwise agreed, he reimburses any encumbrancer or owner of the real property who is not the debtor for the cost of repairing any physical injury excluding diminution in the value of the real property caused by the absence of the goods removed or by the necessity for replacement, but a person so entitled to reimbursement may refuse permission to remove until the secured party has given adequate security for any reimbursement arising under this subsection. <sup>Removal of collateral</sup>

**Retention of collateral** (5) A person having an interest in real property that is subordinate to a security interest by virtue of subsection 1 or 2 and subsection 3 may, before the collateral has been removed from the real property by the secured party in accordance with subsection 4, retain the collateral upon payment to the secured party of the amount owing under the security interest having priority over his claim.

**Accessions** **38.**—(1) Subject to subsection 2 and to section 39 and notwithstanding subsection 3 of section 35,

- (a) a security interest in an accession that attached before the goods became an accession has priority as to the accession over the claim of any person in respect of the whole; and
- (b) a security interest in goods that attached after the goods became an accession has priority over the claim of any person who subsequently acquired an interest in the whole, but not against a person who had an interest in the whole at the date of attachment of the security interest in the accession and who has not consented in writing to the security interest in the accession or disclaimed an interest in the accession as part of the whole.

**Exceptions** (2) A security interest referred to in subsection 1 is subordinate to the interest of,

- (a) a subsequent purchaser for value of an interest in the whole; or
- (b) a creditor with a lien on the whole, subsequently obtained as a result of judicial process; or
- (c) a creditor with a prior perfected security interest in the whole to the extent that he makes subsequent advances,

if the subsequent purchase was made, the lien was obtained or the subsequent advance under the prior perfected security interest was made or contracted for without notice of the security interest.

**Removal of collateral** (3) If a secured party, by virtue of subsections 1 and 2, has an interest in an accession that has priority over the claim of any person having an interest in the whole, he may, on default, subject to the provisions of this Act respecting default, remove his collateral from the whole if, unless otherwise agreed, he reimburses any encumbrancer or owner of the whole



who is not the debtor for the cost of repairing any physical injury excluding diminution in value of the whole caused by the absence of the goods removed or by the necessity for replacement, but a person so entitled to reimbursement may refuse permission to remove until the secured party has given adequate security for any reimbursement arising under this subsection.

(4) A person having a security interest in the whole that is subordinate to a security interest by virtue of subsections 1 and 2 may, before the collateral has been removed by the second party in accordance with subsection 3, retain the collateral upon payment to the second party of the amount owing under the security interest having priority over his claim. <sup>Retention of collateral</sup>

**39.** A perfected security interest in goods that subsequently become part of a product or mass continues in the product or mass if the goods are so manufactured, processed, assembled or commingled that their identity is lost in the product or mass, and, if more than one security interest attaches to the product or mass, the security interests rank equally according to the ratio that the cost of the goods to which each interest originally attached bears to the cost of the total product or mass. <sup>Commingled goods</sup>

**40.** A secured party may, in the security agreement or otherwise, subordinate his security interest to any other security interest. <sup>Priority subject to subordination</sup>

**41.—(1)** Unless an account debtor has made an enforceable agreement not to assert defences or claims arising out of a sale as provided by section 17, the rights of an assignee are subject to, <sup>Account debtors</sup>

- (a) all the terms of the contract between the account debtor and the assignor and any defence or claim arising therefrom; and
- (b) any other defence or claim of the account debtor against the assignor that accrued before the account debtor received notice of the assignment.

(2) The account debtor may pay the assignor until the account debtor receives notice, reasonably identifiable with the relevant rights, that the account has been assigned, and, if requested by the account debtor, the assignee shall furnish proof within a reasonable time that the assignment has been made, and, if he does not do so, the account debtor may pay the assignor. <sup>Idem</sup>

## PART IV

## REGISTRATION

Registrar, appointment  
function

**42.**—(1) There shall be a registrar of personal property security.

(2) It shall be the function of the registrar, under the direction of the Inspector of Legal Offices, to supervise the operation of the registration system established for the purposes of this Act.

seal of office

(3) The registrar shall have a seal of office in such form as the Lieutenant Governor in Council approves.

Registration system

**43.**—(1) A registration system shall be established for the purposes of this Act.

Central office

(2) The central office of the registration system shall be located at or near the City of Toronto.

Branch offices

(3) A branch office of the registration system shall be located at or near each county and district town and at such other places as are determined from time to time by the Inspector of Legal Offices.

Regulations

(4) The Lieutenant Governor in Council may make regulations respecting the registration system and registration procedures.

Signing officers

**44.** The registrar may designate one or more persons on the staff of the central office or a branch office as signing officers to complete the registration of documents and to authenticate certificates under this Act.

Registrar's certificate

**45.** Upon the request of any person and upon payment of the prescribed fee,

- (a) the registrar shall issue a certificate stating whether there is registered at the time mentioned in the certificate a security agreement or other document in which the person named in the certificate is shown as a debtor and, if there is, the registration number of it, and any other information recorded in the office of the registrar;
- (b) any registered security agreement or other document shall be provided for inspection at the branch office where it was registered; and
- (c) a certified copy of any security agreement or other document shall be furnished at the branch office where it was registered.

**46.**—(1) There shall be an account in the Consolidated Revenue Fund to be known as “The Personal Property Security Assurance Fund”, referred to in this section as “the Fund”, into which shall be paid such portion of the fees received under this Act as may be determined from time to time by the Lieutenant Governor in Council. <sup>Assurance Fund</sup>

(2) Interest shall be credited to the Fund out of the Consolidated Revenue Fund at a rate to be determined from time to time by the Lieutenant Governor in Council, and such interest shall be made up at the close of each fiscal year upon the balance in the Fund at the end of the previous calendar year. <sup>Interest</sup>

(3) Any person who suffers loss or damage as a result of his reliance upon a certificate of the registrar issued under this Part that is incorrect because of an error or omission in the operation of the system of registration, recording, and production of information under this Part, is entitled to have compensation paid to him out of the Fund so far as the Fund is sufficient for that purpose, having regard to any other charges thereon, if he makes a claim therefor under subsection 4 within one year from the time of his having suffered the loss or damage. <sup>Persons suffering damage to be compensated</sup>

(4) A person claiming to be entitled to payment of compensation out of the Fund shall make application therefor in writing to the registrar, setting out therein his full name and address and the particulars of his claim. <sup>Claim for compensation</sup>

(5) The registrar shall refer the application to the Master of the Supreme Court who shall issue such directions as he thinks proper, hold a hearing, determine the claimant's entitlement to compensation, the amount thereof, and, if awarded, the costs of the proceedings. <sup>Reference to Master</sup>

(6) The Master shall make his findings and embody his conclusions in the form of a certificate and send by registered mail one copy thereof to the claimant at the address shown in the application and one copy to the registrar. <sup>Master's certificate</sup>

(7) The certificate of the Master shall be deemed to be confirmed at the expiration of thirty days from the date of mailing it to the claimant, unless notice of appeal is served within that time. <sup>Confirmation of certificate</sup>

(8) The claimant or the registrar may appeal to the Court of Appeal at any time before the certificate of the Master is confirmed, and the procedure thereon shall be the same as upon an appeal from a report when a whole action has been referred under section 69 of *The Judicature Act*. <sup>Appeal</sup>

Payment  
out of  
Fund

(9) When the registrar receives a certificate of the Master under subsection 6 and the time for any appeal has expired or, where an appeal is taken, it is disposed of, and it is finally determined that the claimant is entitled to payment of compensation out of the Fund, the registrar shall certify to the Treasurer of Ontario the sum found to be payable, including any costs awarded to the claimant, and the Treasurer shall pay such sum to the claimant out of the Fund.

Where  
documents  
to be  
registered,  
effective  
time of  
registration

**47.** Documents to be registered under this Act shall be tendered for registration at any branch office established under subsection 2 of section 43, but registration is effective only from the time of the recording thereof in the central office and the assignment thereto of an appropriate registration number.

What is  
to be  
registered

**48.—(1)** In order to register under this Act for the purpose of perfecting a security interest, the security agreement or a copy thereof signed by the debtor shall, subject to subsection 2, be registered, and it shall contain and legibly set forth at least,

- (a) the full name and address of the debtor;
- (b) the full name and address of the secured party;
- (c) the date of execution of the security agreement;
- (d) a description of the collateral sufficient to identify it;
- (e) the terms and conditions of the security agreement;  
and
- (f) where appropriate, the affidavit provided for in section 15.

Exceptions

(2) Where the collateral was subject to a security interest in another jurisdiction at the time the collateral was brought into Ontario or where it is desired to perfect a security interest in the proceeds of collateral included in an already perfected security interest, the secured party may register a copy of the security agreement signed by the debtor or a caution (Form 1).

What  
constitutes  
registration

(3) Registration of a copy signed by the debtor or a caution under this section constitutes registration of the security agreement for the purposes of this Act.

Time  
limit on  
registration

(4) Where the collateral is other than instruments, securities, letters of credit, advices of credit or negotiable documents of title, the security agreement shall not be registered after fifteen days from the date of its execution.

Assignments

**49.—(1)** An assignment, or a copy thereof signed by the secured party of record, of a security agreement may also be

registered, if the security agreement has been registered under this Act previous to the registration of the assignment, if the assignment contains and legibly sets forth at least,

- (a) the full name and address of the debtor;
- (b) the full name and address of the secured party of record;
- (c) the full name and address of the assignee; and
- (d) the registration number given at the time of the registration of the security agreement or, if the assignment is presented for registration at the same time as the security agreement, the registration number of the security agreement that is then endorsed thereon.

(2) Upon the registration of an assignment or a copy thereof <sup>Idem</sup> under subsection 1, the assignee becomes the secured party of record.

**50.**—(1) Where a security interest has been perfected by registration and the debtor with the consent of the secured party assigns his interest in the collateral, the assignee becomes a debtor and the security interest becomes unperfected unless the secured party registers a notice (Form 3) within fifteen days of the time he consents to the assignment. <sup>Assignment of collateral</sup>

(2) Where a security interest has been perfected by registration and the secured party learns that the debtor has assigned his interest in the collateral, the security interest becomes unperfected fifteen days after the secured party learns of the assignment and the name and address of the assignee, unless he registers a notice (Form 3) within such fifteen days. <sup>Where security interest becomes unperfected</sup>

(3) A security interest that becomes unperfected under subsection 1 or 2 may thereafter be perfected by registering a notice (Form 3) or as otherwise provided by this Act. <sup>Second registration</sup>

**51.** An amendment, or a copy thereof, of a security agreement registered under this Act that refers to the registration number of the security agreement that it amends and that is signed by the secured party of record and by the debtor may be registered at any time during the period that the registration of the security agreement is effective. <sup>Amendments</sup>

**52.** A separate agreement signed by the secured party of record that provides for the subordination of a security interest created or provided for by a security agreement registered under this Act and that refers to the registration number of the security agreement may be registered at any time during the period that the registration of the security agreement is effective. <sup>Subordination</sup>

Renewal  
statements

**53.** A renewal statement (Form 4) that is signed by the secured party of record may be registered at any time.

Effective  
registration

**54.**—(1) Where the collateral covered by a security agreement is other than instruments, securities, letters of credit, advices of credit or negotiable documents of title, registration under this Act,

- (a) of a security agreement constitutes notice thereof to all persons claiming any interest in such collateral during the period of three years following such registration;
- (b) of a renewal statement constitutes notice of the security agreement to which it relates to all persons claiming any interest in such collateral during the period of three years following such registration; and
- (c) of any other document constitutes notice thereof to all persons claiming any interest in such collateral during the remainder of the period for which the registration of the security agreement is effective.

Fixtures

(2) Where the collateral is or includes fixtures or goods that may become fixtures, or crops, or oil, gas or other minerals to be extracted, or timber to be cut, the security agreement or any other document that may be registered under this Act containing a description of the land affected sufficient for registration under *The Land Titles Act* or *The Registry Act*, as the case may be, may, whether or not it is registered under this Act, be registered under *The Land Titles Act* or *The Registry Act*.

R.S.O. 1960,  
cc. 204, 348

Discharge of  
security  
agreement

**55.**—(1) Upon performance of all obligations under a security agreement, it shall be discharged, and, upon written demand delivered either personally or by registered mail during the period that the registration of the security agreement is effective by any person having an interest in the collateral to the secured party, the secured party shall sign and deliver personally or by registered mail to the person demanding it, at the place set out in the demand, a certificate of discharge (Form 5) together with unregistered assignments, if any, of the security agreement.

Release of  
part of  
collateral

(2) Where it is agreed to release part of the collateral upon payment or performance of certain of the obligations under a security agreement, then, upon performance of such obligations and upon written demand delivered either personally or by registered mail during the period that the registration of the security agreement is effective by any person having

an interest in the collateral to the secured party, the secured party shall sign and deliver personally or by registered mail to the person demanding it, at the place set out in the demand, a release (Form 6) of the collateral as agreed.

(3) Where the secured party, without reasonable excuse, <sup>Failure to deliver</sup> fails to deliver the required discharge and assignments or release, as the case may be, within ten days after receipt of a demand therefor under subsection 1 or 2, he shall pay \$100 to the person making the demand and any damages resulting from the failure, which sum and damages are recoverable in any court of competent jurisdiction.

(4) Upon application to the county or district court by <sup>Security or payment into court</sup> originating notice to all persons concerned, the judge may,

(a) allow security for or payment into court of the amount claimed by the secured party and such costs as he may fix, and thereupon order that the registration of the security agreement be discharged or that a release of collateral be registered, as the case may be; or

(b) order upon any ground he deems proper that the registration of the security agreement be discharged or that a release of collateral be registered, as the case may be.

(5) Any discharge of a security agreement and any release <sup>Registration of discharges and releases</sup> of collateral may be registered under this Act.

## PART V

### DEFAULT—RIGHTS AND REMEDIES

**56.**—(1) The rights and remedies referred to in this Part <sup>Rights and remedies cumulative</sup> are cumulative.

(2) Where the debtor is in default under a security agreement, the secured party has, in addition to any other rights and remedies, the rights and remedies provided in the security agreement except as limited by subsection 5, the rights and remedies provided in this Part and, when in possession, the rights, remedies and duties provided in section 20. <sup>Secured party's rights and remedies</sup>

(3) The secured party may enforce the security interest by <sup>Secured party's remedies</sup> any method available in or permitted by law and, if the collateral is or includes documents of title, the secured party may proceed either as to the documents of title or as to the

goods covered thereby, and any method of enforcement that is available with respect to the documents of title is also available, *mutatis mutandis*, with respect to the goods covered thereby.

Debtor's  
rights and  
remedies

(4) Where the debtor is in default under a security agreement, he has, in addition to the rights and remedies provided in the security agreement and any other rights and remedies, the rights and remedies provided in this Part and in section 20.

Waiver and  
variation  
of rights  
and duties

(5) Except as provided in sections 61 and 62, the provisions of subsections 3, 4 and 5 of section 59 and of sections 60, 61, 62 and 63, to the extent that they give rights to the debtor and impose duties upon the secured party, shall not be waived or varied, but the parties may by agreement determine the standards by which the rights of the debtor and the duties of the secured party are to be measured, so long as such standards are not manifestly unreasonable having regard to the nature of such rights and duties.

Where  
agreement  
covers both  
real and  
personal  
property

(6) Where a security agreement covers both real and personal property, the secured party may proceed under this Part as to the personal property or he may proceed as to both the real and the personal property in accordance with his rights and remedies in respect of the real property, in which case this Part does not apply.

No merger  
in judgment

(7) A security interest does not merge merely because a secured party has reduced his claim to judgment.

Collection  
rights of  
secured  
party

**57.**—(1) Where so agreed and in any event upon default under a security agreement, a secured party is entitled,

(a) to notify any account debtor or any obligor on an instrument to make payment to him whether or not the assignor was theretofore making collections on the collateral; and

(b) to take control of any proceeds to which he is entitled under section 28.

Idem

(2) A secured party who by agreement is entitled to charge back uncollected collateral or otherwise to full or limited recourse against the debtor and who undertakes to collect from the account debtors or obligors on instruments shall proceed in a commercially reasonable manner and may deduct his reasonable expenses of realization from the collections.

Secured  
party's  
right to  
take posses-  
sion upon  
default

**58.** Upon default under a security agreement,

(a) the secured party has, unless otherwise agreed, the right to take possession of the collateral by any method permitted by law;



- (b) if the collateral is equipment and the security interest has been perfected by registration, the secured party may, in a reasonable manner, render such equipment unusable without removal thereof from the debtor's premises, and the secured party shall thereupon be deemed to have taken possession of such equipment; and
- (c) the secured party may dispose of collateral under section 59 on the debtor's premises.

**59.**—(1) Upon default under a security agreement, the secured party may dispose of any of the collateral in its condition either before or after any commercially reasonable repair, processing or preparation for disposition, and the proceeds of the disposition shall be applied consecutively to,

- (a) the reasonable expenses of retaking, holding, repairing, processing, preparing for disposition and disposing of the collateral and, to the extent provided for in the security agreement and not prohibited by law, any other reasonable expenses incurred by the secured party;
- (b) the satisfaction of the obligation secured by the security interest of the party making the disposition; and
- (c) the satisfaction of any obligation secured by the subordinate security interest in the collateral if written demand therefor is received by the party making the disposition before the distribution of the proceeds is completed.

(2) Where a written demand under clause c of subsection 1 is received by the secured party, he may request the holder of the subordinate security interest to furnish him with reasonable proof of such holder's interest, and, unless such holder furnishes such proof within a reasonable time, the secured party need not comply with such demand.

(3) Collateral may be disposed of in whole or in part, and any such disposition may be by public sale, private sale, lease or otherwise and, subject to subsection 5, may be made at any time and place and on any terms so long as every aspect of the disposition is commercially reasonable.

(4) The secured party may, subject to subsection 1 of section 61, retain the collateral in whole or in part for such period of time as is commercially reasonable.

Secured party's right to dispose of collateral upon default

Request for proof of interest

Methods of disposition

Secured party's right to delay disposition of collateral

Secured  
party to  
give  
notice of  
disposition  
of collateral

(5) Unless the collateral is perishable or unless the secured party believes on reasonable grounds that the collateral will decline speedily in value, the secured party shall give to the debtor and to any other person who has a security interest in the collateral and who has registered a security agreement under this Act indexed in the name of the debtor or who is known by the secured party to have a security interest in the collateral not less than fifteen days notice in writing containing,

- (a) a brief description of the collateral;
- (b) the amount required to satisfy the obligation secured by his security interest;
- (c) the amount of the applicable expenses referred to in clause *a* of subsection 1 or, in a case where the amount of such expenses has not been determined, his reasonable estimate thereof;
- (d) a statement that upon payment of the amounts due the debtor may redeem the collateral;
- (e) a statement that unless the amounts due are paid the collateral will be disposed of and the debtor may be liable for any deficiency; and
- (f) the date, time and place of any public sale or of the date after which any private disposition of the collateral is to be made.

Service of  
notice

(6) The notice required by subsection 5 shall be served personally upon or left at the residence or last known place of abode of the party to be served or may be sent by registered mail to his last known post office address.

Secured  
party's  
right to  
purchase  
collateral

(7) The secured party may purchase the collateral or any part thereof only at a public sale.

Effect of  
disposition  
of collateral

(8) Where collateral is disposed of in accordance with this section, the disposition discharges the security interest of the secured party making the disposition and, if such disposition is made to a *bona fide* purchaser for value, discharges also any subordinate security interest and terminates the debtor's interest in the collateral.

Idem

(9) Where collateral is disposed of by a secured party after default otherwise than in accordance with this section, then,

(a) in the case of a public sale, if the purchaser has no knowledge of any defect in the sale and if he does not purchase in collusion with the secured party, other bidders or the person conducting the sale; or

(b) in any other case, if the purchaser acts in good faith,

the disposition discharges the security interest of the secured party making the disposition and, where the disposition is made to a purchaser for value, discharges also any subordinate security interest and terminates the debtor's interest in the collateral.

(10) A person who is liable to a secured party under a guarantee, endorsement, covenant, repurchase agreement or the like and who receives a transfer of collateral from the secured party or is subrogated to his rights has thereafter the rights and duties of the secured party, and such a transfer of collateral is not a disposition of the collateral. Certain transfers of collateral

**60.** Where a security agreement secures an indebtedness Surplus and the secured party has dealt with the collateral under section 57 or has disposed of it in accordance with section 59 or otherwise, he shall account for any surplus to any person, other than the debtor, whom the secured party knows to be the owner of the collateral, and, in the absence of such knowledge, he shall account to the debtor for any surplus.

**61.—**(1) Where the security agreement secures an indebtedness Compulsory disposition of collateral, consumer goods and the collateral is consumer goods and the debtor has paid at least 60 per cent of the indebtedness secured and has not signed, after default, a statement renouncing or modifying his rights under this Part, the secured party who has taken possession of the collateral shall, within ninety days after taking possession, dispose of or contract to dispose of the collateral under section 59, and, if he fails to do so, the debtor may proceed under section 63 or in an action for damages or loss sustained.

(2) In any case other than that mentioned in subsection 1, Retention of collateral a secured party in possession of the collateral may, after default, propose to retain the collateral in satisfaction of the obligation secured, and notification of such proposal shall be given to the debtor and to any other person whom such secured party knows to be the owner of the collateral and, except in the case of consumer goods, to any other person who has a security interest in the collateral and who has registered a security agreement under this Act indexed in the name of the debtor or who is known by the secured party in possession to have a security interest in the collateral.

Idem

(3) If any person entitled to notification under subsection 2 objects in writing within fifteen days after being notified, the secured party in possession shall dispose of the collateral under section 59, and, in the absence of any such objection, such secured party shall, at the expiration of such period of fifteen days, be deemed to have irrevocably elected to retain the collateral in satisfaction of the obligation secured, and thereafter is entitled to hold or dispose of the collateral free of all rights and interests therein of any person entitled to notification under subsection 2 who was given such notification.

Redemption  
of collateral

**62.** At any time before the secured party has disposed of the collateral by sale or exchange or contracted for such disposition under section 59 or before the secured party shall be deemed to have irrevocably elected to retain the collateral in satisfaction of the obligation under subsection 2 of section 61, the debtor, or any person other than the debtor who is the owner of the collateral, or any secured party other than the secured party in possession, may, unless he has otherwise agreed in writing after default, redeem the collateral by tendering fulfilment of all obligations secured by the collateral together with a sum equal to the reasonable expenses of retaking, holding, repairing, processing, preparing the collateral for disposition and in arranging for its disposition, and, to the extent provided for in the security agreement and not prohibited by law, the reasonable expenses incurred by the secured party.

Remedies  
for failure  
of secured  
party to  
comply with  
this Part

**63.—**(1) Where a secured party in possession of collateral is not complying with any of the obligations imposed by section 20 or, after default, is not proceeding in accordance with this Part or the account is disputed, the debtor or any person who is the owner of the collateral or the creditors of either of them or any person other than such secured party who has an interest in the collateral may apply to the Supreme Court or to a county or district court having jurisdiction with respect thereto, and the court may, upon hearing any such application, direct that the secured party comply with the obligations imposed by section 20, or that the collateral be or be not disposed of, or order an account to be taken or make such other or further order as the court deems just.

Idem

(2) If the disposition of the collateral has been made otherwise than in accordance with this Part,

- (a) the debtor or any other person entitled to notice under subsection 5 of section 59 or whose security interest has been made known to the secured party

prior to the disposition has a right to recover from the secured party any loss or damage caused by his failure to comply with this Part; and

- (b) where the collateral is consumer goods, the debtor has a right to recover in any event an amount not less than the credit service charge plus 10 per cent of the principal amount of the debt or the time price differential plus 10 per cent of the cash price.

(3) Where an application under subsection 1 is made to a county or district court, a respondent may, by notice served on the applicant and on the other respondents, if any, and filed with proof of service thereof with the clerk of the county or district court not later than the two days preceding the day of the return of the application, require the proceedings to be removed into the Supreme Court.

(4) Upon the filing of the notice and proof of service thereof, the clerk of the county or district court shall forthwith transmit the papers and proceedings to the proper office of the Supreme Court in the county or district in which the application is made.

(5) When the papers and proceedings are received at the proper office of the Supreme Court, the proceedings are *ipso facto* removed into the Supreme Court.

(6) Where an application under subsection 1 is made to or is removed into the Supreme Court, the court may refer any question to a master or other officer for inquiry and report.

(7) An appeal lies to the Court of Appeal from any order made under this section.

## PART VI

### MISCELLANEOUS

**64.** Where in this Act any time is prescribed within which or before which any act or thing must be done, a judge on application may, upon such terms and conditions and with such notice, if any, as he may order, extend such time for compliance upon being satisfied that no interest of any other person will be prejudiced by such extension, but, in the event that it later appears that any such act or thing done within the period so extended has prejudiced the rights that any person acquired prior to the doing of such act or thing, such act or thing shall be presumed not to have been done in conformity with this Act, and the rights that such person acquired prior to the doing of such act or thing shall be determined on that basis.

Transitional  
provision

**65.** This Act applies only where the security interest attaches on or after the day on which this Act came into force, and, except as provided in sections 66 and 67, where the security interest attached before this Act came into force, the security interest continues to have such force and effect as if this Act had not been passed.

Idem

**66.**—(1) Every security interest that was covered by an unexpired filing or registration when this Act came into force shall be registered under this Act by the registration of a notice as to the security interest signed by the officer with whom it is filed or registered with effect as of the date when this Act came into force.

Idem

R.S.O. 1960,  
cc. 24, 70

(2) The officer referred to in subsection 1 shall send a copy of such notice to every holder of record of a security interest that is registered under *The Assignment of Book Debts Act* or *The Corporation Securities Registration Act* together with a notice stating that the registration will expire three years after the day on which this Act came into force unless renewed under this Act.

Idem

(3) Registration of the notice shall continue the existing effect of the prior filing or registration as a perfection for its remaining life or for three years, whichever is the shorter.

Idem

**67.** A secured party having security interest that was covered by an unexpired filing or registration when this Act came into force may, if he thinks fit, register it thereafter as if it were a newly-attached security interest without prejudice to his position under subsection 1 of section 66.

Rules of  
practice

**68.** Unless otherwise provided in this Act or in the regulations made under this Act, the Rules of Practice and Procedure of the Supreme Court apply to proceedings under this Act.

References

R.S.O. 1960,  
cc. 24, 34,  
61, 70

**69.** Any general or special Act or any provision thereof that relates to a security interest, including *The Assignment of Book Debts Act*, *The Bills of Sale and Chattel Mortgages Act*, *The Conditional Sales Act* and *The Corporation Securities Registration Act*, shall be deemed to refer to this Act or to the corresponding provision of this Act, as the case may be.

Destruction  
of docu-  
ments

**70.** Where books, documents, cards or papers have been preserved for the purposes of this Act for so long that it appears they need not be preserved any longer, the Inspector of Legal Offices may authorize their destruction.

Certain  
provisions  
repealed  
1966, c. ...

**71.** Sections 14 and 15, clause *f* of subsection 1 of section 48 and Form 2 are repealed on the day that section 19 of *The Consumer Protection Act, 1966* comes into force.

**72.** The following are repealed:

Repeal:

1. *The Assignment of Book Debts Act.* R.S.O. 1960,  
c. 24
2. *The Bills of Sale and Chattel Mortgages Act.* R.S.O. 1960,  
c. 34
3. *The Bills of Sale and Chattel Mortgages Amendment Act, 1960-61.* 1960-61,  
c. 6
4. *The Conditional Sales Act.* R.S.O. 1960,  
c. 61
5. *The Conditional Sales Amendment Act, 1962-63.* 1962-63,  
c. 18
6. *The Corporation Securities Registration Act.* R.S.O. 1960,  
c. 70

**73.** This Act comes into force on a day to be named by the Lieutenant Governor by his proclamation. Commence-  
ment

**74.** This Act may be cited as *The Personal Property Security Act, 1966.* Short title

FORM 1

(Sections 6 (2) and 48 (2) )

CAUTION

Full Name of Original Debtor.....  
Address of Original Debtor.....  
Full Name of Secured Party.....  
Address of Secured Party.....  
Description of Collateral Sufficient to Identify It:

(If Caution is being registered to perfect a security interest in the proceeds of collateral included in an already perfected security interest, and the already perfected security interest was perfected by registration under this Act, insert:)

\*Assigned  
by the  
Registrar

\*Registration Number of Security Agreement.....  
Date of Registration.....

(If the security agreement has been assigned, also insert:)

Full Name(s) of Assignee(s) (in order of the assignments).....  
.....  
Address(es) of Assignee(s).....  
\*Registration Number(s) of the Assignment(s).....  
Date(s) of Registration.....

(If the Debtor's interest in the collateral has been assigned, insert:)

Full Name(s)† of Assignee(s) (in order of the assignments)....  
.....  
Address(es)† of Assignee(s).....  
\*Registration Number(s) of the Notice(s) of Assignment of  
collateral.....  
Date(s) of Registration.....

(If the security agreement has been amended, insert:)

\*Registration Number(s) of Amendment(s).....  
Date(s) of Registration.....  
Nature of Amendment(s).....



The undersigned certifies that:

the collateral described above has been brought into Ontario and was subject to a security interest in another jurisdiction, namely  
....., at the time it was brought into Ontario.  
Registration detail in that jurisdiction:

OR..... it is desired to perfect a security interest in the collateral described above, being the proceeds of collateral included in an already perfected security interest. The security interest in the original collateral was perfected in the following manner: *(state manner of perfection, such as by registration, taking of possession, etc.)*

Dated at.....this.....day of....., 19...

.....  
Signature of Secured Party of Record

† In the case of an assignment without the consent of the secured party but of which he learned, the name and address of the assignee as known to the secured party are sufficient.

FORM 2

(Section 15)

AFFIDAVIT OF DEBTOR

County (or District) of }  
To Wit: }

I, ....., of the.....  
of....., in the.....of.....,  
....., make oath and say:

1. That I am the debtor referred to in the accompanying security agreement.

2. That I am fully aware of the nature of the transaction and that I know that the security interest extends to personal property in addition to that included in the purchase-money security interest.

3. That the security interest was not created in fraud of creditors.

Sworn before me at the.....  
of.....  
in the.....  
of.....  
this.....day of.....,  
19....

.....  
Signature of Debtor

A Commissioner, etc.

FORM 3

(Section 50)

NOTICE OF ASSIGNMENT OF COLLATERAL

Full Name of Original Debtor.....

Address of Original Debtor.....

\*Assigned  
by the  
Registrar

\*Registration Number of Security Agreement.....

Date of Registration.....

(If the Debtor's interest in the collateral has been assigned, insert:)

Full Name(s)† of Assignee(s) (in order of the assignments)....

Address(es)† of Assignee(s).....

\*Registration Number(s) of the Notice(s) of Assignment of  
collateral.....

Date(s) of Registration.....

(If the security agreement has been assigned, insert:)

Full Name(s)† of Assignee(s) (in order of the assignments).....

Address(es)† of Assignee(s).....

\*Registration Number(s) of the Assignment(s).....

Date(s) of Registration.....

The undersigned certifies that:

- (1) the Debtor under the security agreement referred to above intends to assign, with the consent of the undersigned, his interest in the collateral covered thereby to.....

or

- (1) the Debtor under the security agreement referred to above assigned his interest in the collateral covered thereby to.....  
.....of which assignment the undersigned learned on the.....(date).....;

- (2) the full name and address of the said.....  
referred to in (1) above are:

full name.....

address.....

Dated at.....this.....day of....., 19...

.....  
Signature of Secured Party of Record

† In the case of an assignment without the consent of the secured party but of which he learned, the name and address of the assignee as known to the secured party are sufficient.

FORM 4

(Section 53)

RENEWAL STATEMENT

Full Name of Original Debtor.....

Address of Original Debtor.....

\*Assigned  
by the  
Registrar

\*Registration Number of Security Agreement.....

Date of Registration.....

(If the security agreement has been assigned, insert:)

Full Name(s) of Assignee(s) (in order of the assignments).....

Address(es) of Assignee(s).....

\*Registration Number(s) of the Assignment(s).....

Date(s) of Registration.....

(If the security agreement has been amended, insert:)

\*Registration Number(s) of Amendment(s).....

Date(s) of Registration.....

Nature of Amendment(s).....

(If a Release of Collateral has been granted, insert:)

\*Registration Number(s) of Release(s) of Collateral.....

Date(s) of Registration.....

Description of Collateral Released Sufficient to Identify It:

(If prior renewal statements have been registered, insert:)

\*Registration Number(s) of Renewal Statement(s).....

Date(s) of Registration.....

(If the Debtor's interest in the collateral has been assigned, insert:)

Full Name(s)† of Assignee(s) (in order of the assignments)....

Address(es)† of Assignee(s).....

\*Registration Number(s) of the Notice(s) of Assignment of collateral.....

Date(s) of Registration.....

The undersigned certifies that:

- (1) the undersigned is the secured party of record in reference to the security agreement referred to above;
- (2) the debtor is still indebted under the security agreement; and
- (3) the registration hereof is not for any fraudulent purpose.

Dated at.....this.....day of....., 19...

.....  
Signature of Secured Party of Record

† In the case of an assignment without the consent of the secured party but of which he learned, the name and address of the assignee as known to the secured party are sufficient.

FORM 5

(Section 55 (1) )

CERTIFICATE OF DISCHARGE

Full Name of Original Debtor.....

Address of Original Debtor.....

\*Assigned  
by the  
Registrar

\*Registration Number of Security Agreement.....

Date of Registration.....

(If the security agreement has been assigned, insert:)

Full Name(s) of Assignee(s) (in order of the assignments).....

.....

Address(es) of Assignee(s).....

\*Registration Number(s) of the Assignment(s).....

Date(s) of Registration.....

The undersigned certifies that:

(1) he is the person entitled by law to discharge the security agree-  
ment; and

(2) the security agreement referred to above is discharged.

Dated at.....this.....day of....., 19...

.....  
Signature of Secured Party of Record

FORM 6

(Section 55 (2) )

RELEASE OF COLLATERAL

Full Name of Original Debtor.....

Address of Original Debtor.....

\*Assigned  
by the  
Registrar

\*Registration Number of Security Agreement.....

Date of Registration.....

(If the security agreement has been assigned, insert:)

Full Name(s) of Assignee(s) (in order of the assignments).....

.....

Address(es) of Assignee(s).....

\*Registration Number(s) of the Assignment(s).....

Date(s) of Registration.....

(If the Debtor's interest in the collateral has been assigned, insert:)

Full Name(s)† of Assignee(s) (in order of the assignments)....

.....

Address(es)† of Assignee(s).....

\*Registration Number(s) of the Notice(s) of Assignment of  
collateral.....

Date(s) of Registration.....

The undersigned certifies that:

(1) he is the person entitled by law to release the collateral described below;

(2) the collateral described below is released from the security interest created or provided for by the security agreement referred to above.

(Here insert a description of the collateral sufficient to identify it:)

Dated at.....this.....day of....., 19...

.....  
Signature of Secured Party of Record

† In the case of an assignment without the consent of the secured party but of which he learned, the name and address of the assignee as known to the secured party are sufficient.

#### EXPLANATORY NOTE

Subsection 2 of section 25 of *The Sale of Goods Act* reads: —

- (2) Where a person having bought or agreed to buy goods obtains, with the consent of the seller, possession of the goods or the documents of title to the goods, the delivery or transfer by that person, or by a mercantile agent acting for him, of the goods or documents of title, under a sale, pledge or other disposition thereof to a person receiving the same in good faith and without notice of any lien or other right of the original seller in respect of the goods, has the same effect as if the person making the delivery or transfer were a mercantile agent in possession of the goods or documents of title with the consent of the owner.

The purpose of this Bill is to provide the exception to subsection 2 mentioned in the new subsection 2*a*, thus allowing the transactions mentioned in subsection 2*a* to be dealt with under *The Personal Property Security Act, 1966*.



## DRAFT BILL

### An Act to amend The Sale of Goods Act

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. Section 25 of *The Sale of Goods Act* is amended by adding thereto the following subsection: R.S.O. 1960, c. 358, s. 25, amended

(2a) Subsection 2 does not apply to goods the possession of which has been obtained by a buyer under a security agreement whereby the seller retains a security interest within the meaning of *The Personal Property Security Act, 1966*, and the rights of the parties shall be determined by that Act. Security interests excepted 1966, c. ...

2. This Act comes into force on a day to be named by the Lieutenant Governor by his proclamation. Commencement

3. This Act may be cited as *The Sale of Goods Amendment Act, 1966*. Short title





Date Due




Ontario. Law Reform  
Commission.

3A

